

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 29, 2023

SEAN F. MCAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

AMMIE Y.,¹

Plaintiff,

vs.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:22-cv-00126-RHW

**ORDER ADOPTING REPORT
AND RECOMMENDATION TO
DENY PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT
AND GRANT DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

ECF Nos. 13, 14, 21

Before the Court is the Report and Recommendation issued by Magistrate Judge James. A. Goeke on September 11, 2023, ECF No. 22, recommending Plaintiff's Motion for Summary Judgment, ECF No. 13, be denied and Defendant's Motion for Summary Judgment, ECF No. 14, be granted. Plaintiff filed objections to the Report and Recommendation and Defendant responded. ECF Nos. 22, 23.

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 After reviewing the Report and Recommendation, the Court finds the Magistrate
2 Judge's recommendation is correct. Therefore, the Court adopts the Report and
3 Recommendation in its entirety, albeit with the additional explanation below.

4 The RFC limits Plaintiff's interaction with coworkers and the public, but not
5 supervisors. Tr. 31. Plaintiff argues the ALJ was required to include "some
6 discussion" of "why she believed that Plaintiff had limitation with respect to
7 coworkers and the public, but not supervisors," as Dr. Akins assessed mild to
8 moderate limitations in her ability to interact "with others." ECF No. 22 at 5.
9 However, any such error regarding the ALJ's consideration of Plaintiff's social
10 limitation was harmless because it was inconsequential to the ALJ's ultimate
11 nondisability determination. *See Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050,
12 1055 (9th Cir. 2006).

13 The ALJ determined that Plaintiff was capable of performing the jobs of
14 production assembler, electrical accessories assembler, and electronic bench
15 worker. Tr. 38. According to Appendix B of the Dictionary of Occupational Titles
16 ("DOT"), the fifth number of the nine-digit code reflects the job's relationship to
17 people. DOT, App. B—Explanation of Data, People, & Things, *available at* 1991
18 WL 688701 (1991). The DOT rates the amount of interaction with people on a
19 scale of 0–8, with 8 representing the lowest possible level of human interaction
20 that exists in the labor force. *See Lane v. Colvin*, 643 F. App'x 766, at *770 n.1

1 (10th Cir. 2016). That ranking describes the need to take instructions as only
2 “[a]ttending to the work assignment instructions or orders of supervisor” with
3 “[n]o immediate response required unless clarification of instructions or orders is
4 needed.” DOT, 1991 WL 688701 (1991). Courts have determined that level 8
5 interaction is compatible with an RFC limiting a claimant to only superficial
6 contact with coworkers, supervisors, and the public. *See, e.g., Lisa M. v. Comm’r*,
7 No. 20-cv-0178-MWP, 2021 WL 3513832, at *4 (W.D.N.Y. Aug. 10, 2021)
8 (“Positions categorized as involving level 8 interaction can be performed by
9 individuals who require limited interaction with supervisors.”); *Alie v. Berryhill*,
10 No. 4:16-cv-1353-JMB, 2017 WL 2572287, at *16 (E.D. Mo. 2017) (“Level 8
11 interaction is compatible with a RFC limiting a claimant to only superficial contact
12 with coworkers, supervisors, and the public.”).

13 All three positions identified by the expert at step five list the type of social
14 interaction required as level 8 and require, at most, minimal amount of
15 interpersonal interaction, including with supervisors.² *See DOT 706.687-010*,
16 *available at* 1991 WL 679074 (1991) (production assembler); 729.687-010,
17 *available at* 1991 WL 679733 (1991) (electrical accessories assembler); 726.687-

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19 ² Moreover, for each of the identified jobs, the DOT states: “People: 8 – Taking
20 Instructions- Helping, N-Not Significant,” meaning that interactions with people
are not a significant part of the job.

1 10, *available at* 1991 WL 679633 (1991) (electronic bench worker). Thus, even if
2 the ALJ erred by failing to discuss and include mild to moderate limitations in
3 interactions with supervisors, the error is harmless because inclusion of that
4 limitation would not alter the ALJ's findings at steps four and five. *Accord See*
5 *Kathleen C. v. Berryhill*, No. CV 17-05796-DFM, 2019 WL 10002497, at *3 (C.D.
6 Cal. March 1, 2019); *Whitehorne v. Comm'r of Soc. Sec.*, No. 19-CV-256, 2020
7 WL 5077025, at * (W.D.N.Y. Aug. 27, 2020) (ALJ's alleged error in limiting
8 interactions with coworkers and general public but not supervisors was harmless
9 where representative occupations could be performed by “individuals who require
10 limited interaction with supervisors”).

11 Accordingly, **IT IS ORDERED:**

12 1. Plaintiff’s objections to the Report and Recommendation, **ECF No. 22**,
13 are **OVERRULED**.

14 2. The Report and Recommendation, **ECF No. 21**, is **ADOPTED** in its
15 entirety, with the additional explanation herein.

16 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.

17 3. Defendant’s Motion for Summary Judgment, **ECF No. 14**, is
18 **GRANTED**.

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1 The District Court Executive is directed to enter this order, **ENTER**
2 **JUDGMENT** in favor of Defendant, forward copies to counsel and Magistrate
3 Judge Goeke, and **CLOSE THE FILE**.

4 DATED September 29, 2023.

5 s/Robert H. Whaley
6 ROBERT H. WHALEY
7 Senior United States District Judge
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